

CLIMAX MOLYBDENUM COMPANY

A unit of AMAX Inc.

May 23, 1990

CDH — Certified Mail No.: P 720 678 883
EPA — Certified Mail No.: P 720 678 890

Ms. Sandy Marek
Permits and Enforcement Section
Colorado Department of Health
Water Quality Control Division
4210 East Eleventh Avenue
Denver, CO 80220

RECEIVED
ORIGINAL COPY
MAY 29 1990
EPA REGION VIII
COMPLIANCE AND ENFORCEMENT SECTION

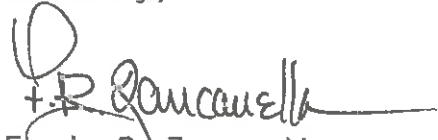
Dear Ms. Marek:

In compliance with Part I, section A.2.b of the current Colorado Wastewater Discharge Permit No. 0000248 for Tenmile Creek, this letter is intended as written confirmation of the verbal notification to you on May 23, 1990, of the intent of the Climax Molybdenum Company to commence the annual Snowmelt Bypass on or shortly after May 28, 1990.

The apparent limited amount of run-off water this year, in conjunction with the quality of the water contained within the Climax System, should result in a short duration and low discharge rate by-pass with minimal impact on Tenmile Creek.

The primary, and continuing, goal of the Climax Mine, with respect to water management and the 1990 Snowmelt By-pass, is to maintain the highest possible quality of water with the least amount of environmental impact to Tenmile Creek.

Sincerely,


Frank R. Zancanella
Water Resources Manager

cc: ✓ EPA-Water Mgmt. Div.-Compliance Branch
R.A. Kilborn - Climax
G.G. VanRiper/S. Mueller - Golden

BEFORE THE DEPARTMENT OF HEALTH
DIVISION OF ADMINISTRATION
STATE OF COLORADO

RECEIVED
NOV 15 1985

WATER QUALITY CONTROL
Director's Office

ANSWER TO NOTICE OF VIOLATION
AND REQUEST FOR HEARING

RECEIVED DATE: DEC 06 1985
COMPLIANCE ASSURANCE SECTION
Original *Barb* BH 12/9
cc *Chad, Ann, Phil* (Action)
(Info)

IN THE MATTER OF: AMAX INC., CLIMAX MOLYBDENUM COMPANY
PERMIT NO. CO-0000248
LAKE COUNTY, COLORADO

AMAX Inc., through its undersigned attorneys, hereby responds to allegations set forth in a Notice of Violation issued by the Colorado Department of Health, Water Quality Control Division, on October 18, 1985.

I. RESPONSE TO FINDINGS OF FACT

1. Admit.

2. Admit.

3. AMAX admits that the treatment system at Climax consists of a primary system (the tailing ponds) and a supplemental system (the plant). AMAX denies that this system is operated in such a way that discharges to Tenmile Creek consist solely of discharges from the tailing ponds, the plant, or both. Discharges also include water from interceptor canals.

4. Admit.

5. AMAX admits that the Water Quality Control Commission held hearings in 1979 for the purpose of establishing water quality standards on Tenmile Creek, that AMAX was a party to those proceedings, and that final standards were adopted on June 9, 1980. AMAX challenged these standards. Further hearings were held in 1980 and 1982, the division and AMAX ultimately agreed to a joint recommendation, and on December 6, 1982 the Commission adopted revised standards on the basis of this recommendation. These standards were further modified in 1984. AMAX admits that the 1980 standards, as revised in 1982 and 1984, form the basis for some effluent limitations in the permit. AMAX denies that the standards form the basis for all effluent limitations in the permit. AMAX denies all other allegations contained in paragraph 5 of the Notice of Violation.

6. AMAX admits that "all season" water quality based effluent limitations in the permit were calculated on the assumption that "all season" discharges would be limited to 2000 gallons per minute. AMAX denies, however, that the permit contains any flow limitations.

7. AMAX admits that the time period for "snowmelt bypasses" is specified in the permit as any contiguous sixty days beginning not earlier than May 1, and ending not later than July 31. AMAX denies the remainder of this paragraph.

8. Admit.

9. Deny.

10. AMAX admits that it has not submitted a new permit application. AMAX denies that a new application is required.

11. AMAX is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 11 of the Notice of Violation, and therefore denies the same.

12. Admit.

13. Admit.

14. AMAX admits that it met with state representatives on March 6, 1985, regarding the 1985 nonsnowmelt bypass. AMAX denies that the division informed AMAX, at that time, that it believed AMAX to be in violation of the permit.

15. Admit.

16. Admit.

II. RESPONSE TO NOTICE OF VIOLATION

1. Deny.

2. Deny.

3. Deny.

4. Deny.

5. Deny.

6. Deny.

7. Deny.

8. Deny.

9. Deny.

10. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 1 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

11. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 2 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

12. Deny.

13. Deny.

14. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 3 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

15. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 4 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

16. Deny.

17. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 6 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

18. Deny.

19. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 9 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

20. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 7 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

21. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 8 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

22. AMAX denies that it failed to comply with notice or approval requirements in the permit, as alleged in the unnumbered paragraph following paragraph 21 of the Notice of Violation.

23. AMAX denies that any of the alleged facts constitute a change in discharge requiring modification of the permit, as alleged in the second unnumbered paragraph following paragraph 21 of the Notice of Violation.

WHEREFORE, AMAX denies that the admitted facts constitute violations of Permit No. CO-0000248.

III. AFFIRMATIVE DEFENSES

A. FIRST DEFENSE

1. AMAX incorporates herein everything set forth in Parts I and II above.

2. Paragraphs 1 through 21 of the Notice of Violation fail to "state the provision [of the permit] alleged to be violated," as required by C.R.S. § 25-8-602(1).

3. The division therefore lacks jurisdiction over AMAX as to the matters raised therein, and as to such matters, the Notice of Violation and Cease and Desist Order should be dismissed.

B. SECOND DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A above.

2. The division therefore lacks jurisdiction over the subject matter raised therein, and as to such subject matter, the Notice of Violation and Cease and Desist Order should be dismissed.

C. THIRD DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A and B above.

2. The Notice of Violation fails to state a claim for relief, and should therefore be dismissed with the Cease and Desist Order.

D. FOURTH DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A, B, and C above.

2. To the extent that the division has asserted a claim for relief, it is embodied in the Cease and Desist Order which accompanied the Notice of Violation.

3. AMAX has complied with all requirements of the Cease and Desist Order.

4. The dispute is therefore moot, and the Notice of Violation and Cease and Desist Order should be dismissed with prejudice.

E. FIFTH DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A, B, C, and D above.

2. Part II.A.2.c(4) of Permit No. CO-0000248 specifically authorizes AMAX to bypass treatment facilities at Climax, notwithstanding any resultant exceedance of effluent limitations that otherwise would apply.

3. During the period from March 4, 1985 to June 3, 1985, which encompasses all of the alleged permit violations, the Climax facility was engaged in a nonsnowmelt bypass pursuant to the foregoing section of the permit. This bypass was conducted pursuant to the notice set forth as Exhibit A to the Notice of Violation, and the division has never contested any of the matters set forth therein.

4. Since all of the alleged violations were, in fact, authorized by the permit, the Notice of Violation and Cease and Desist Order should be dismissed with prejudice.

F. SIXTH DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A, B, C, D, and E above.

2. AMAX has previously bypassed treatment facilities at Climax for reasons similar to those set forth in Exhibit A to the Notice of Violation.

3. The division has never before objected to such bypasses.

4. The division failed to respond in a timely fashion to the notice set forth in Exhibit A to the Notice of Violation.

5. The division's failure to act constituted de facto ratification and approval of the bypass.

6. Since the division ratified and approved the bypass in question, the Notice of Violation and Cease and Desist Order should be dismissed with prejudice.

G. SEVENTH DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A, B, C, D, E, and F above.

2. AMAX relied to its detriment upon the division's failure to act.

3. The division should therefore be estopped from asserting that AMAX violated its permit, and the Notice of Violation and Cease and Desist Order should be dismissed with prejudice.

H. EIGHTH DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A, B, C, D, E, F, and G above.

2. The division did not purport to withhold approval of the bypass until April 9, 1985, more than a month after it commenced.

3. The division did not commence this action until October 18, 1985, more than four months after termination of the bypass.

4. The division has not explained the reason for such delay.

5. The division's delay has worked to AMAX's disadvantage by preventing the company from pursuing alternative remedies.

6. The Notice of Violation and Cease and Desist Order should therefore be dismissed with prejudice pursuant to the doctrine of laches.

IV. MITIGATING FACTORS

During all of the alleged violations, AMAX was taking all available measures to minimize the impact of its discharges on the environment.

V. REQUEST FOR HEARING

Pursuant to C.R.S. § 25-8-603 and 5 CCR 1002-1, §§ 2.1.4 and 2.1.11, AMAX hereby requests a hearing on the foregoing matters. AMAX estimates that it will take three full days to present its case.

Respectfully submitted this 15th day of November 1985.

AMAX Inc.

By: Richard O. Austermann
Richard O. Austermann (#6854)
Senior Counsel
Environmental Affairs
1707 Cole Boulevard
Golden, Colorado 80401-3293
(303) 231-0250

VRANESH AND RAISCH

By: Jerry W. Raisch, by Poa
Jerry W. Raisch (#2982)
P. O. Box 871
Boulder, Colorado 80306
(303) 443-6151